

## REMARKS

In complete response to the outstanding Official Action of August 28, 2003, on the above-identified application, reconsideration is respectfully requested. Claims 1-34 are pending. Claims 4-10, 14 and 28-34 are withdrawn from consideration. Claims 1-3, 11-13, and 15-27 are rejected.

### Claim Rejections Under 35 U.S.C. § 102:

Claims 1, 2, 13, 16, 17, 20, and 26 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Bender et al ('309 or '507). Contrary to the Examiner's statement, all the elements of the present invention are not disclosed in the Bender et al references ('309 or '507).

Claim 1 of the instant application positively recites, and requires, two steps: 1) applying antimicrobial chemicals, and 2) thereafter, chilling. Neither of the two Bender et al. references ('309 or '507) *require* these steps.

Bender et al. '309, Claim 1 reads :

"A process for treating poultry carcasses consisting essentially of contacting the poultry carcasses, *prior to chilling*, with an aqueous treatment solution containing about 4% or greater trialkali metal orthophosphate based on the weight of the solution, said treatment solution having a pH of above 11.5, said treatment being conducted for a period of time effective to reduce the overall aerobic bacterial count without causing organoleptic depreciation of the poultry and thereby increase the shelf-life of the poultry."

The step of chilling is *inferentially claimed*, and not positively recited as a required step. In addition to be inferentially claimed, no chilling step is enabled or even disclosed in the body of the Specification. All that is disclosed and enabled are the various chemical treatment techniques and requirements. These same arguments hold true for Bender et al. '507, Claim 9 as well.

Indeed, it is ambiguous whether or not the aforementioned chemical treatment process is actually required to *precede* any subsequent treatment process, as indicated in the following passage :

"While it is possible to treat the poultry at any point in the process before chilling and at any temperature and time which does not harm the product, we have identified several areas where we believe the treatment will be most effective. One or more treatments with the alkali metal orthophosphate during processing are possible and often desirable. *Any treatment temperature from 0° to 70° C. for process times of several seconds to hours depending on the temperature is feasible.*" (Bender et al. '309, Column 9, Lines 34 through 42, *emphasis added*)

One of ordinary skill in the art would regard treatment at a temperature of 0° C. as chilling. If one were to try to reduce the processing temperature any further, it would constitute *freezing*.

Thus the § 102 rejection is unsupported and should be withdrawn.

Claims 1-3, 11-13, 15, 18-25, and 27 are rejected under 35 U.S.C. § 102(e) as being anticipated by Caraccioto, Jr et al. '709. Contrary to the Examiner's statement, all the elements of the present invention are not disclosed in the Caraccioto, Jr. et al. '709.

Claim 1 of the instant application positively recites, and requires, two steps: 1) applying antimicrobial chemicals, and 2) thereafter, chilling. Caraccioto, Jr. et al. does not *require* these steps.

Claim 3 requires that the gasses remove heat from the room through the walls, but does not require that this take place after treatment, and does not positively recite a chilling step. Simply removing heat from the walls could constitute a minimal temperature drop, and just as easily be characterized as

only slightly cooling, and not chilling to the degree required in the instant application.

Claim 4 requires that the heat removal required by claim 3, be elevated to the point of freezing the food. One of ordinary skill in the art would recognize the difference between freezing and chilling. Again, no requirement that this take place after the treatment. Again, no chilling step is positively recited.

Claims 5, 6, 9 and 10 require a step whereby the temperature in the room is regulated to reduce microbial growth in the room. No temperatures are recited. No chilling step is positively recited.

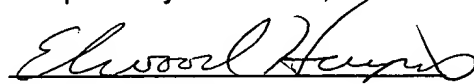
Claim 7 again modifies claim 6 to the point of freezing. One of ordinary skill in the art would recognize the difference between freezing and chilling. Again, no requirement that this take place after the treatment. Again, no chilling step is positively recited.

Thus the § 102 rejection is unsupported and should be withdrawn.

## CONCLUSION

Accordingly, it is believed that the present application now stands in condition for allowance. Early notice to this effect is earnestly solicited. Should the examiner believe a telephone call would expedite the prosecution of the application, he is invited to call the undersigned attorney at the number listed below.

Respectfully submitted,



Elwood Haynes  
Registration No. 55,254

Date: April 7, 2004  
Air Liquide  
2700 Post Oak Blvd., Suite 1800  
Houston, Texas 77056  
(713) 624-8956 Phone  
(713) 624-8950 Fax

Application No. 09/894,406  
Amendment dated April 7, 2004  
Reply to Office Action of December 23, 2003



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Stacy Forte